



UNITED STATES DISTRICT COURT
District of Rhode Island

**AMENDED NOTICE OF PROPOSED
AMENDMENTS TO LOCAL RULES**

Pursuant to 28 U.S.C. § 2071(b), Fed. R. Civ. P. 83(a)(1), and Fed. R. Crim. P. 57(a)(1), the United States District Court for the District of Rhode Island hereby gives notice that a proposed amendment to the Court's Local Rules is being considered for adoption.

On September 30, 2016, the Court invited public comment on the following proposed amendments to the Local Rules: LR Gen 102, LR Gen 103, LR Gen 111, LR Gen 112, LR Gen 202, LR Gen 309, LR Cv 54, LR Cv 55, and LR Cr 44.

In addition to the above-referenced proposed amendments, the Court also invites public comment on a proposed amendment to LR Gen 303.

Copies of the proposed amendments may be reviewed and printed from the Court's website at www.rid.uscourts.gov. These amendments are also available for inspection at the Clerk's Office, United States District Court, One Exchange Terrace, Providence, RI 02903.

Due to the addition of LR Gen 303 to the group of proposed amendments already open for public comment, the deadline for public comment on all of the proposed amendments to the Local Rules has been extended to November 10, 2016. Any comments must be submitted in writing to the Clerk's Office, or by e-mail to Local_Rules@rid.uscourts.gov.

OCTOBER 21, 2016

DAVID A. DiMARZIO
CLERK OF COURT

LR Gen 102 DOCUMENTS CONTAINING CONFIDENTIAL INFORMATION

- (a) **Privacy Protections.** It is the responsibility of any party or non-party filing a document, not the Clerk's Office, to review each document to determine if pleadings are in compliance with Fed. R. Civ. P. 5.2, Fed. R. Crim. P. 49.1, and the Judicial Conference Policy on Privacy and Public Access to the Electronic Case Files.

If the Court finds a document that contains personal identifiers referenced in Fed. R. Civ. P. 5.2 and Fed. R. Crim. P. 49.1, the Clerk's Office will limit non-parties' remote electronic access to the document containing the personal identifiers, and direct the party responsible for the filing to file a redacted version of the document.

- (b) **Sealed Documents Generally.**

- ~~(1) Documents filed with the Court may not be sealed unless ordered by the Court. If a party or non-party filing a document has a good faith basis for believing that a document should be sealed, the document shall be accompanied by a motion to seal, which explains why the document should be sealed.~~
- ~~(2) Unless the Court otherwise permits, if a party or non-party has good reason to believe that a document that such party or non-party proposes to file contains material that another party or non-party would maintain is confidential, the document shall not be filed until such other party or non-party has been notified and afforded an opportunity to file a motion to seal.~~
- ~~(3) If only a portion of a document contains confidential information, the party or non-party requesting sealing shall file both an unredacted version of the document and a redacted version that excises the confidential information.~~
- ~~(4) The motion to seal shall not be filed electronically, but shall be filed by hand or by mail, together with the documents or materials which are the subject of the motion.~~
- ~~(e) **Filing of Sealed Documents in Civil Cases.** Upon receipt of a motion to seal in a civil case, the clerk shall docket the motion but not the documents which are the subject of the motion and shall immediately transmit the motion and documents to the chambers of the judge to whom the case has been assigned. If the Court grants the motion to seal and unless otherwise ordered by the Court, the sealed documents shall be retained by the clerk in a secure location until further order of the Court. If the Court denies the motion to seal, the order denying the motion to seal shall be docketed, and the memorandum and the documents accompanying the motion shall be returned to the filer, unless otherwise ordered by the Court.~~
- ~~(d) **Filing of Sealed Documents in Criminal Cases.** Upon receipt of a motion to seal in a criminal case, the clerk shall immediately transmit the motion and the documents which are the subject of the motion to the chambers of the judge to whom the case has been assigned. If the Court grants the motion to seal and unless otherwise ordered by the Court, the motion to seal, the order granting the motion to seal, and the sealed documents~~

~~shall be retained by the clerk in a secure location until further order of the Court. If the Court denies the motion to seal, the motion to seal and the order denying the motion to seal shall be docketed, and the memorandum and the documents accompanying the motion shall be returned to the filer, unless otherwise ordered by the Court.~~

1. Filing of Sealed Documents. Documents may be sealed by order of the Court only upon the filing of a motion to seal. The motion to seal, a separate memorandum stating the basis for the sealing as required by LR Cv 7 and LR Cr 47, and the document(s) subject to the motion to seal must be filed electronically and will remain provisionally under seal until the Court rules on the motion. Documents submitted by a party under seal, provisionally or otherwise, must be stamped or labeled by the party on the cover page “FILED UNDER SEAL.”

If the Court denies the motion to seal, the document(s) subject to the motion to seal will not be accepted for filing in the case.

2. Service of Motions to Seal.

A. Civil Cases. A motion to seal in a civil case may be served electronically if the party has consented to electronic filing pursuant to LR Gen 304(c) and LR Gen 309(b). Parties who are ineligible to file and receive documents electronically or exempt from electronic filing must be served conventionally pursuant to LR Cv 5.1(b).

B. Criminal Cases. A motion to seal in a criminal case must be conventionally served on all parties in the case pursuant to LR Cv 5.1(b).

3. Limiting Sealed Filings and Redactions. Rather than automatically requesting the sealing of an entire motion or other filing, parties should consider whether redaction would be sufficient. If only a portion of a document contains confidential information, the party requesting sealing pursuant to (b)(1) shall file both an unredacted version of the document and a redacted version that excises the confidential information.

(e)(c) Unsealing of Documents. Documents sealed by the Court may be unsealed at any time upon motion of a party or non-party or by the Court *sua sponte*, provided that the parties first are given notice and an opportunity to be heard.

LR Gen 103 COURTROOM PRACTICE

- (a) **Addressing the Court.** Counsel shall stand at the podium when addressing the Court and when examining and cross-examining witnesses unless the Court expressly excuses counsel from standing.
- (b) **Registering Objections.** When registering an objection, counsel shall state the legal grounds for the objection (e.g., leading, hearsay, etc.) and/or the Rule of Evidence upon which counsel relies (e.g., 404(b)) but shall not argue or make any further comment unless requested by the Court.
- (c) **Witnesses.**
- (1) **Scheduling.** Counsel shall schedule witnesses in a manner that ensures that there will be no delays in trial.
 - (2) **Examination.** No witness may be examined by more than one attorney representing a party unless the Court otherwise permits.
 - (3) **Attorneys as Witnesses.** An attorney shall not testify in a trial or evidentiary hearing in a case in which that attorney participates as counsel, except to the extent allowed by the Standards of Professional Conduct set forth in LR Gen 208 and permitted by the Court.
- (d) **Exhibits.**
- (1) **Custody.** Unless otherwise ordered by the Court, the Clerk shall maintain custody of all exhibits marked for identification and/or admitted into evidence in any proceeding except for sensitive exhibits. Sensitive exhibits, including but not limited to, narcotics and other controlled substances, firearms, ammunition, explosive devices, jewelry, liquor, poisonous or dangerous chemicals, money or articles of high monetary value, counterfeit currency, and biological hazards shall be retained by the party offering the exhibit prior to, throughout, and after the trial or proceeding.
 - ~~(2)~~ **Preservation.** ~~When necessary in order to complete the record, the Court shall permit a party to photograph or otherwise copy a chalk, or print or otherwise reproduce any electronic images and markings thereon, or to preserve any other item shown to the fact finder.~~
 - ~~(3)~~**(2) Disposition.** Unless otherwise ordered by the Court, within 30 days after the appeal is concluded or the time for appeal has expired ~~the final disposition of the case, exhibits in the custody of the Clerk may~~ must be removed ~~from the Clerk's office~~ by the party that presented the exhibit. Exhibits not so removed ~~may~~ will be destroyed or otherwise disposed of by the Clerk.

LR Gen 111 — PHOTOGRAPHING; RECORDING; BROADCASTING

- (a) — **General Prohibition.** Except to the extent expressly authorized by the Court, no person shall photograph, record, broadcast, or otherwise transmit any proceeding, event or activity in or from any interior portion of the United States Courthouse or that portion of the John O. Pastore Building that is occupied by the Court. The Court may permit photographing, recording or broadcasting of ceremonial proceedings upon such terms and conditions as the Court may specify.
- (b) — **Note Taking.** Nothing in subsection (a) of this Rule shall prevent any person from taking notes in the courtroom during a proceeding in Court, provided that such note-taking is not disruptive of Court proceedings. ~~*[see Comment, end of Rule]~~

***COMMENT**

Pursuant to the General Order dated January 31, 2014, authorized members of the media may use electronic devices in the courtrooms of the judicial officers who have approved a standing exemption to LR Gen 111 and LR Gen 112. Please consult the General Order dated January 31, 2014, and related materials available on the Court's website.

LR Gen 112 USE OF ELECTRONIC DEVICES

- (a) **General Prohibition on Electronic Devices.** Except as provided in subsection ~~(b)~~ (c) of this rule or expressly authorized by the Court, no person shall bring into the Courthouse or ~~that~~ portion of the John O. Pastore Building ~~that is~~ occupied by the Court any electronic device of any kind that has the capability capable of sending or receiving communications, making sound or video recordings, or making, recording or transmitting photographs or videos.* ~~[see Comment, end of Rule]~~
- (b) **Photographing, Recording, and Broadcasting.** Except to the extent expressly authorized by the Court, no person shall photograph, record, broadcast, or otherwise transmit any proceeding, event, or activity held in the Courthouse or portion of the John O. Pastore Building occupied by the Court. The Court may permit photographing, recording or broadcasting of ceremonial proceedings upon such terms and conditions as the Court may specify.
- ~~(b)~~(c) **Electronic Devices. Exceptions.** Electronic devices, including but not limited to cellular or smart phones, laptops, and tablets, may be brought into and used within the Courthouse or ~~that~~ portion of the John O. Pastore Building ~~that is~~ occupied by the Court only by ~~attorneys or those having express authorization~~ individuals authorized pursuant to this subsection. and only upon the following conditions:
- (1) **Use of Electronic Devices by Attorneys.** Unless the Court otherwise orders, attorneys may use electronic devices in the Courthouse and portion of the John O. Pastore Building occupied by the Court, including courtrooms and chambers, upon the following conditions:
- (A) Use of electronic devices shall not be disruptive of Court proceedings;
- (B) Use of electronic devices does not conflict with (b) or any other provision of the Local Rules, Court order, or statute;
- (C) Unauthorized use of electronic devices may result in the user being required to relinquish the device to the custody of the United States Marshal until released by a judicial officer and/or imposition of sanctions.
- (2) **Use of Electronic Devices by Media.** Unless the Court otherwise orders, members of the media who have been authorized to bring and use electronic devices in the Courthouse and portion of the John O. Pastore Building occupied by the Court, may use those devices under the conditions set forth in (b) and (c)(1) in the courtrooms of those judicial officers who have approved such usage. The Clerk will maintain lists of authorized individuals and those judicial officers who have approved such usage.
- ~~(1) Unless the use of the electronic device is expressly authorized by the presiding judicial officer, before entering any courtroom, chambers or Grand Jury room, anyone carrying an electronic device shall at the direction of the presiding judicial officer either:~~

~~(A) turn off the device completely and keep the device turned off during all times in the courtroom, chambers or Grand Jury room; or~~

~~(B) check it with the courtroom clerk or court security officer at that location.~~

~~(2) Upon entering the building, any person carrying an electronic device shall acknowledge and agree that, upon violation of the conditions set forth in paragraph (1) above and/or of any other limitations placed on the use of such instruments, said device may be confiscated.~~

***COMMENT**

~~Pursuant to the General Order dated January 31, 2014, authorized members of the media may use electronic devices in the courtrooms of the judicial officers who have approved a standing exemption to LR Gen 111 and LR Gen 112. Please consult the General Order dated January 31, 2014, and related materials available on the Court's website.~~

LR Gen 202 ELIGIBILITY AND PROCEDURE FOR ADMISSION

- (a) **Requirements for Admission.** In order to be eligible for membership in the Bar of this Court, an attorney must:
- (1) Be a member in good standing of the Bar of the Supreme Court of the State of Rhode Island; and
 - (2) Either:
 - (A) Have completed the course of instruction on Federal Practice and Procedure given by this Court's Board of Bar Admissions, or
 - (B) Have at least 5 years of ~~experience in practicing before federal courts~~ practice experience, or a combination of federal practice and federal law clerk experience that totals at least 5 years, and certify that he or she has read and understands these Local Rules;
- and
- (3) Establish to the satisfaction of this Court, that he or she is of good moral character and otherwise qualified and fit to be admitted to the Bar of this Court.
- (b) **Procedure for Admission.**
- (1) **Application for Admission.** An individual applying for admission pursuant to LR Gen 202(a)(2)(A) shall file with the Clerk a completed application form, together with a current certificate from the Rhode Island Supreme Court that the applicant is a member in good standing of the Bar of that Court.

An individual applying for admission pursuant to LR Gen 202(a)(2)(B) shall file with the Clerk a completed application form accompanied by a current certificate from the Rhode Island Supreme Court that the applicant is a member in good standing of the Bar of that Court, together with a current certificate from a United States district court that the applicant is a member in good standing of the Bar of that court.
 - (2) **Admission Fee.** An individual applying for admission also shall pay the admission fee fixed by the Court.
 - (3) **Review of Application.** In the case of an application pursuant to LR Gen 202(a)(2)(A), the Clerk shall examine the application, the court certificate and the records indicating that the applicant has completed the course of instruction given by the Board of Bar Admissions. If the Clerk finds that those documents and records indicate that the applicant satisfies the prerequisite for admission, the Clerk shall notify the applicant and the Chairman of the Board of Bar Admissions and place the applicant on the list for admission. If the Clerk finds that the documents and records indicate that the applicant does not satisfy the

prerequisites for admission, the Clerk shall notify the applicant and the Chief Judge of this Court. Said notification shall specify the reasons for this determination.

In the case of an application pursuant to LR Gen 202(a)(2)(B) the application shall be reviewed by the Chair of the Board of Bar Admissions who shall recommend to the Chief Judge whether the application should be approved or rejected. The final decision shall be made by the Chief Judge who shall direct the Clerk to notify the applicant of the decision.

- (4) **Admission Ceremony.** Admission to the Bar of this Court is effected by the granting of a motion made by the Chairman of the Board of Bar Admissions or his designee at an admission ceremony presided over by the Court. In the case of an individual admitted pursuant to LR Gen 202(a)(2)(B), admission is effected upon approval by the Chief Judge of the application for admission.

In order to be admitted, an applicant shall make the following oath or affirmation:

I do solemnly [swear] [affirm] that, to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic, and that I will bear true faith and allegiance to the same; that I take the obligation freely, without any mental reservation or purpose of evasion; and that I will demean myself as an attorney, proctor, and solicitor of this court, uprightly and according to the law. [So help me God.]

Upon making the prescribed oath or affirmation, the applicant shall be a member of the Bar of this Court.

(c) **Board of Bar Admissions and Course of Instruction.**

(1) **Board of Bar Admissions.**

- (A) **Establishment of Board.** There shall be a Board of Bar Admissions which shall administer a course of instruction on federal practice and practice before this Court, in particular.
- (B) **Membership.** The Board of Bar Admissions shall consist of 8 members or such other number as may be fixed from time to time by the Court. The Board shall be comprised of individuals who are members of the Bar of this Court and who regularly practice before this Court. The Chair of the Board of Bar Admissions shall be appointed by the Chief Judge.
- (C) **Term.** Board members shall serve staggered 3-year terms with the terms of one-third of the members expiring on May 31 of each year. At the expiration of his or her term, a Board member who has served 3 years or less may be reappointed for one additional 3-year term.

- (2) **Course of Instruction.** The course of instruction shall cover those subjects determined by the Court, in consultation with the Board of Bar Admissions, and shall include instruction on these Local Rules. Applicants for admission shall be required to attend all sessions unless excused by the Court or by the Chair of the Board of Bar Admissions, for good cause shown.

LR Gen 303 SPECIAL FILING REQUIREMENTS

(a) Civil Case Opening Documents.

- (1) Complaints and Notices of Removal.** Absent an exemption under LR Gen 302, complaints or notices of removal, together with the civil cover sheet and a summons for each defendant to be served, shall be filed electronically, and the required filing fee shall be paid at the time of filing. The Clerk's Office will issue a summons for each defendant to be served to the filer.
- (2) Other Civil Case Initiating Documents.** Civil case initiating documents not mentioned in (a)(1), or to be filed under seal, shall be filed conventionally, together with the civil cover sheet, a summons for each defendant to be served, and the required filing fee. The Clerk's Office will issue a summons for each defendant to be served to the filer.

(b) Miscellaneous Case Opening Documents. Miscellaneous case opening documents shall be filed conventionally along with the prescribed filing fee.

(c) Other Documents to be Conventionally Filed. The following documents must be conventionally filed:

- ~~(1)~~ — ~~Motions to file documents under seal and documents filed under seal;~~
- ~~(2)~~(1) Records of administrative review proceedings other than social security cases;
- ~~(3)~~(2) The state court record and other Rule 5 materials in habeas corpus cases filed in 28 U.S.C. §2254 proceedings;
- ~~(4)~~(3) *Ex parte* motions and applications;
- ~~(5)~~(4) Consent to Proceed Before a Magistrate Judge;
- ~~(6)~~(5) All pleadings and documents filed by prisoner *pro se* litigants and non-prisoner *pro se* litigants not granted permission to file documents electronically;
- ~~(7)~~(6) The charging document in a criminal case, such as the complaint, indictment and information;
- ~~(8)~~(7) Affidavits for search and arrest warrants and related papers;
- ~~(9)~~(8) Fed. R. Crim. P. 20 and Fed. R. Crim. P. 5 papers received from another court;
- ~~(10)~~(9) Any pleading or document in a criminal case containing the signature of a defendant, such as a waiver of indictment or plea agreement; and
- ~~(11)~~(10) Appearance Bonds.

(d) Format of Electronically Filed Documents. Documents must be formatted for electronic filing by converting the original word processing document into PDF, resulting in what is referred to as a “native PDF” or “text PDF.” PDF images created by scanning paper documents should be avoided unless the filer does not possess a word processing file version of the document (e.g., Exhibits).

Unless otherwise required by statute, rule, or court order, documents that require an original signature(s) other than that of the Filing User must be submitted in a scanned PDF format, and the Filing User must maintain the document with the original signature in accordance with LR Gen 307.

LR Gen 309 SERVICE OF DOCUMENTS BY ELECTRONIC MEANS

- (a) **Notice of Electronic Filing.** Whenever a pleading or other document is filed electronically, the ECF system will automatically generate and send a NEF to the Filing User and registered users of record. The user filing the document should retain a paper or digital copy of the NEF, which shall serve as the Court's date-stamp and proof of filing.
- (b) **NEF as Service.** Transmission of the NEF shall constitute service of the filed document and shall be deemed to satisfy the requirements of Fed. R. Civ. P. 5(b)(2)(E), Fed. R. Civ. P. 77(d) and Fed. R. Crim. P. 49(b).
- (c) **Certificates of Service on Electronically Filed Documents.** All documents filed using the ECF system shall include a certificate of service stating that the document has been filed electronically and that it is available for viewing and downloading from the ECF system. The certificate of service must identify the manner in which the service on each party was accomplished.
- (d) **Exemptions.** Attorneys and *pro se* litigants who are not Filing Users must be conventionally served with any electronically filed documents in accordance with the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.
- ~~(e) **Time.** Service by electronic means shall be treated the same as service by mail for the purpose of adding 3 days to the prescribed period to respond.~~

LR Cv 54 COSTS

- (a) **Timing of Request.** Within 14 days after entry of judgment, a party seeking an award of costs shall file and serve on all other parties a bill of costs. Failure to file a bill of costs within that time shall constitute a waiver of any claim for costs unless the Court otherwise orders, for good cause shown.
- (b) **Form of Request.**
- (1) A bill of costs shall be prepared on forms provided by the Clerk's Office and shall specify each item of costs claimed.
 - (2) A bill of costs shall be supported by a memorandum of law and an affidavit that:
 - (A) the amounts listed in the bill of costs are correct; and
 - (B) all services reflected in the bill of costs were actually performed and were necessary to the presentation of the applicant's case; and
 - (C) all disbursements reflected in the bill of costs represent obligations actually incurred and necessary to the presentation of the applicant's case; and
 - (D) all costs are properly claimed and allowable.
- (c) **Taxation by Clerk.** ~~On or after 14 days following the filing of a bill of costs, the Clerk shall tax those costs which appear to be properly claimed.~~ The taxation of costs shall be in accordance with Fed. R. Civ. P. 54(d)(1). ~~The Clerk and~~ shall notify all parties of the costs allowed.
- (d) **Motion to Review the Clerk's Action.** The taxation of costs by the Clerk shall be final unless modified by the Court. Any challenge to the costs taxed by the Clerk shall be in the form of a motion, which motion shall be served and filed within 7 days after notification pursuant to subsection (c) of this Rule, and shall be supported by a memorandum of law stating the reason for the challenge and the authorities upon which the moving party relies. Within 7 days of the filing of the motion, any party objecting to the motion may file a response.
- (e) **Resolution of Motion.** Within 14 days after a motion to review the Clerk's action is filed, all interested parties shall meet and confer in an effort to resolve the motion. The meeting shall be initiated by the moving party, who shall notify the Court promptly as to whether the issues have been resolved. If all issues have been resolved, the parties shall promptly submit a proposed order. If all issues have not been resolved, the Court will make a final determination with respect to the taxation of costs.

LR Cv 55 ~~MOTIONS FOR DEFAULT AND DEFAULT JUDGMENT~~

~~A motion for entry of default or entry of a default judgment made against a party not represented by counsel shall be accompanied by a certification that:~~

- ~~(a) Notice of the motion was given to the party against whom a default or default judgment is sought by both regular mail, postage prepaid, and by certified or registered mail, return receipt requested. A copy of the return receipt shall be appended to the certification;~~
- ~~(a) Default: The Clerk shall enter a default upon an application by a party that conforms to the requirements of Fed. R. Civ. P. 55(a).~~
- ~~(b) To the best of the movant's knowledge, the address set forth in such certification is the last known address of that party; and~~
- ~~(b) Default judgment: Not less than 14 days after filing of a motion for entry of default judgment made against a party not represented by counsel, the moving party shall file with the Court a certification that:~~
 - ~~1. The party against whom a default judgment is sought is not in the military service of the United States as defined by the Servicemembers Civil Relief Act of 2003, as amended; and;~~
 - ~~2. Notice of the motion was sent to the party against whom the judgment is sought by first class mail and certified mail, return receipt requested, at the address where the party was served with process, and the party's last known address, if different. The certificate shall include the return receipt, or, if unavailable, a statement of the measures taken to attempt service and verify receipt by the defaulted party.~~
- ~~(c) The party against whom a default or default judgment is sought is not in the military service of the United States as defined in the Servicemembers Civil Relief Act of 2003, as amended.~~

LR Cr 44 PROCEEDINGS INVOLVING AN INDIGENT DEFENDANT

(a) Appointment of Counsel by the Court.

- (1) If, based on a financial affidavit of a defendant, the Court determines that the defendant is financially unable to retain private counsel, the Court shall appoint the Federal Defender or an attorney on the Court's Criminal Justice Act Panel (CJA Attorney) to represent that defendant.
- (2) If the Federal Defender is unable to represent the defendant due to a conflict of interest or for any other reason, the Federal Defender shall request that a CJA Attorney be appointed to represent the defendant.
- (3) If the Court determines that a defendant has some assets from which to pay attorneys' fees, the Court may, at any time, order the defendant to pay all or any portion of any attorneys' fees incurred.

(b) CJA Attorneys—Fees and Expenses. An attorney appointed to represent an indigent defendant under the Criminal Justice Act shall complete and file a voucher for fees and expenses ~~on the appropriate forms~~ promptly after completing the services rendered and no later than 45 days after disposition of the case.

(c) Continuing Duty of Representation. Immediately after sentencing, counsel shall:

- (1) inform the defendant of any right that the defendant may have to appeal his conviction and/or sentence; and
- (2) consult with the defendant to determine whether the defendant desires to appeal; and, if so, take whatever steps may be necessary to file a notice of appeal and protect any appellate rights that the defendant may have unless and until other appellate counsel is appointed by the Court of Appeals.